

9-10.1 Limited Access

9-10.1.1 Access Rights Only Conveyances

The appropriate language is included in the conveyance clause on the preprinted forms in which “Access Rights Only” are being conveyed. If there are exceptions to full control of access, the appropriate exception clause is also inserted as explained in Section 9-10.1.5 et seq.

9-10.1.2 Land and Access Rights Conveyances

The access control clause follows the property description clause in a conveyance of a partial acquisition, adapting the following:

“Also, the grantors herein convey and grant to the state of Washington all rights of ingress and egress (including all existing, future or potential easements of access, light, view and air) to, from and between (full, official name of project) and the remainder of said (tract, lot or parcel “A”).”

Note: If an access reservation is provided, continue with the appropriate clause in Section 9-10.1.5 et seq.

9-10.1.3 Release of Lessee’s Interest

The access control clause agrees with the language of the conveyance from the owner, adapting the following:

“Also, said lessee hereby releases from the effect of said lease, all rights of ingress and egress (etc., as in Section 9-10.1.2) . . . and the remainder of the real property described in said (lease) (Parcel A).”

9-10.1.4 Release of Mortgagee’s or Beneficiary’s (Deed of Trust) Interest

The access control clause agrees with the language of the conveyance from the owner, adapting the following:

“Also, said (mortgagee/trustee) hereby releases from the effect of said (mortgage/deed of trust) all rights of ingress and egress (etc., as in Section 9-10.1.2) and the remainder of the real property described in said (mortgage/deed of trust).”

9-10.1.5 Access Reservation

If the access control is modified by any “Access Note” or other feature appearing on the approved plan, such feature is specified in the instrument of conveyance or release by adding to the “Access Control Clause” (see Section 9-10.1.2 et seq.) an “Access Reservation Clause” adapted from one of the following clauses.

Note: The language of such clause in a partial release of lease, substitutes the words “said lessee” in place of the words “grantor” or “grantor herein.” Likewise, the word “mortgagee” is substituted in a partial release of mortgage and the word “trustee” is substituted in a partial reconveyance of a deed of trust.

9-10.1.5.1 By Highway Connection

For access specifically permitted by way of a highway connecting with an access controlled facility:

“ . . . , EXCEPT that the (grantors, lessees, mortgagees, trustee(s) herein reserve(s) for (himself) (his heirs) (its) successors or assigns, the right of reasonable access to the “ _____ ” Line connection of said Highway (_____ erly of HES _____ + _____ said “ _____ ” Line).” Continue with the text in Sections 9-10.1.5.3.1, 9-10.1.5.3.2, or 9-10.6 as appropriate.

9-10.1.5.2 By Frontage Service Road

A. State to Construct — Now

“ . . . , EXCEPT that as a part of the consideration of this transaction, the state agrees to construct on the right of way a frontage service road along the (easterly) side of said highway, and to which frontage service road only, the grantors, their heirs, successors or assigns reserve a right of reasonable access.” Continue with the text in Sections 9-10.1.5.3.1, 9-10.1.5.3.2, or 9-10.6 as appropriate.

B. State to Construct — Future

“ . . . , EXCEPT that as a part of the consideration for this transaction, the state agrees to construct on its right of way at a future date, a FRONTAGE SERVICE ROAD along the (easterly) side of said highway, it being understood and agreed that the grantors herein, their heirs, successors and assigns reserve a temporary right of reasonable access . . . ” Continue with B1 or B2 below as required.

1. Direct Access to Highway. “ . . . directly to said highway until such time as said FRONTAGE SERVICE ROAD is actually constructed at which time all such temporary rights of direct access to the highway shall cease and the rights shall then be limited to the right of reasonable access to the FRONTAGE SERVICE ROAD.” (Insert description of location and/or use restrictions of temporary direct access as appropriate.) Continue with the text in Sections 9-10.1.5.3.1, 9-10.1.5.3.2, or 9-10.06 as appropriate.
2. Other Temporary Access. When temporary access other than via a direct route to the highway is to be provided, such as allowing temporary access only to a specific other public road that is available or can be made available, insert the details as to the type, location, and any restriction of the access as stated in the design specifications. Continue with the text in Sections 9-10.1.5.3.1, 9-10.1.5.3.2, or 9-10.6 as appropriate.

9-10.1.5.3 By Road Approach

A. Type “A” (Residential)

“ . . . , EXCEPT that the state shall construct on its right of way a Type "A" off and on approach, not to exceed 30 feet in width, for the sole purpose of serving a single family residence, on the easterly side, at or near Highway Engineer's Station (36+00), as shown on Sheet _____ of _____ Sheets of the hereinafter mentioned map of definite location, and to which off and on approach only, the grantors, their heirs, successors or assigns, reserve a right of reasonable access for that purpose only.” Continue with the text in Sections 9-10.1.5.3.1 and 9-10.7.

B. Type “B” (Farm)

1. One Side

“ . . . , EXCEPT that the state shall construct on its right of way a Type "B" off and on approach, not to exceed 50 feet in width, for those uses necessary to the normal operation of a farm but not for retail marketing, on the (easterly) side, at or near Highway Engineer's Station (36+00), as shown on Sheet _____ of _____ Sheets of the hereinafter mentioned map of definite location, and to which off and on approach, only, the grantors, their heirs, successors or assigns, reserve a right of reasonable access for that purpose only.” Continue with the text in Sections 9-10.1.5.3.1 and 9-10.7.

2. Each Side

“ . . . , EXCEPT that the state shall construct on its right of way a Type "B" off and on approach, not to exceed 50 feet in width for those uses necessary to the normal operation of a farm but not for retail marketing, on each side of said highway, at or near Highway Engineer's Station (36+20), as shown on Sheet _____ of _____ Sheets of the hereinafter mentioned map of definite location, and to which off and on approaches the grantors, their heirs, successors and assigns, reserve the right of reasonable access for that purpose only.” Continue with the text in Sections 9-10.1.5.3.1 and 9-10.7.

a. Multiple Approaches — Controlled Movement

Used if the grantor has reserved road approaches on each side and traffic may not cross or make left turning movements at grade.

“ . . . The direction of travel to and from each of said approaches shall be limited to the same direction as the movement of the traffic in the lane abutting said approach.”

b. Temporary Grade Crossing

Used if the grantor has reserved road approaches on each side without restriction on crossing or left turning movements at grade.

“ . . . It is understood and agreed that the state may temporarily permit the crossing of said highway at grade and free turning movements from each of said approaches. However, whenever necessary in the opinion of the Department of Transportation, all

grade crossings shall cease and terminate and the direction of travel to and from each of said approaches shall be limited to the same direction as the movement of the traffic in the lane abutting said approach.”

C. Type “C” (Special Use)

Used only on the instrument with the parties who are to have the right of use of such approach.

1. State to Construct

“ . . . , EXCEPT that the state shall construct on its right of way a Type "C" off and on approach, not to exceed (_____) feet in width, for a gated approach to the grantors’ well, on the (easterly) side, (northbound) only, at or near Highway Engineer’s Station (_____), as shown on Sheet _____ of _____ Sheets of the hereinafter mentioned map of definite location, and to which off and on approach only, the grantors, their heirs, successors, or assigns, reserve a right of reasonable access for that purpose only.” Continue with the text in Sections 9-10.1.5.3.1 and 9-10.7.

2. Owner to Construct

“ . . . , EXCEPT that the state agrees to permit the construction on its right of way of one Type "C" off and on approach to the remainder of said Parcel “A”, not to exceed (_____) feet in width, for the uses necessary to the normal operation of a farm (or whatever use is specified by the highway plan), at a point on the (easterly) side of said highway, between Highway Engineer’s Station (_____) and Highway Engineer’s Station (_____), to be mutually agreed upon by the undersigned grantors, their heirs, successors or assigns and the Department of Transportation; and to which off and on approach only, the grantors, their heirs, successors or assigns reserve a right of reasonable access for that purpose only.” Continue with the text in Sections 9-10.1.5.3.1 and 9-10.1.5.3.2.

D. Type “D” (Commercial Single 50 Foot Width)

Used only where Modified Access Control has been established, and further subject to provisions of WAC 252-020-090.

“ . . . , EXCEPT that the state shall construct on its right of way a Type "D" off and on approach not to exceed 50 feet in width for use necessary to the normal operation of a commercial establishment. It may be specified at a point satisfactory to the state at or between designed highway stations as shown on Sheet _____ of _____ Sheets of the hereinafter mentioned map of definite location, and to which off and on approach only, the grantors, their heirs, successors or assigns, reserve a right of reasonable access for that

purpose only.” Continue with the text in Section 9-10.1.5.3.1 and 9-10.7.

E. Type “E” (Commercial Double 30 Foot Width)

Note: This approach is to be utilized only with approval of the HQ Access and Hearing Engineer's office.

“ . . . , EXCEPT that the state shall construct on its right of way a separated off and on approach with each opening not exceeding 30’ in width, for use necessary to the normal operations of a commercial establishment. It may be specified at a point satisfactory to the state at or between designated highway stations as shown on Sheet _____ of _____ Sheets of the hereinafter mentioned map of definite location and to which off and on approach only, the grantors, their heirs, successors or assigns, reserve a right of reasonable access for that purpose only.” Continue with the text in Section 9-10.1.5.3.1 and 9-10.7.

9-10.1.5.3.1 Maintenance of Road Approach

“ . . . , which approach shall be maintained between the right of way line and the shoulder line of said (highway, frontage service road of said highway, highway and/or frontage service road, “_“ Line of said highway) by the grantors, their heirs, successors or assigns.”

9-10.1.5.3.2 Construction Costs and Permits — Owner to Construct Approach

“Obtaining required permits from responsible agencies and the complete construction (and maintenance) costs of said approach shall be the sole responsibility of the grantors, their heirs, successors or assigns.”

9-10.1.5.4 By Highway Structure

Used when the approved Right of Way Plan contains an “Access Note” which permits access under or over the traveled way by use of a highway structure — adapt the text of the “Access Note”:

“ . . . , EXCEPT that traffic movement will be permitted under the highway structures at the (insert name of bridge, etc.) between HES _____ + _____ and HES _____ + _____ as restricted clearances will permit.” If appropriate, continue with the text in Sections 9-10.1.5.3.1 and 9-10.1.5.3.2.

9-10.2 Specific Details

Used in each instrument (principal and supportive) involving either a partial acquisition or a reference to a recorded right of way plan. May also be used on any instrument as a courtesy.

9-10.2.1 One Type of Acquisition

The cited language is used in instruments relating to conveyances of only one type; e.g., fee, easement, permit, lease, etc.

“The lands herein described contain an area of (2.5 acres, square feet) more or less, the specific details concerning all of which are to be found in that certain map of definite location now of record and on file in the office of the Secretary of Transportation at Olympia, and bearing date of approval (month, day, year), (revised) (month, day, year).”

9-10.2.2 Multiple Types of Acquisition

The cited language is used in instruments relating to conveyances of combinations of fee, easement, permit, etc.

“The lands herein described in fee contain an area of (_____ acres, _____ square feet), more or less, and herein described in (easement, permit) contain an area of (_____ acres, _____ square feet) more or less, the specific details concerning all of which . . . (see Section 9-10.2.1).”

9-10.3 Payment Authorization

Used in instruments wherein there are multiple signatories and such parties agree to the state making payment to one of their members.

9-10.3.1 By Grantors to One Grantor

“The undersigned grantors hereby authorize and instruct the state of - Washington to pay the entire consideration to _____, and direct that the state voucher in payment thereof shall be executed only by said _____.”

9-10.3.2 By Mortgagee to Mortgagor/Beneficiary to Grantor

Used on the (Partial Release of Mortgage/Request for Partial Reconveyance of Deed of Trust) to authorize payment to the grantor.

“The undersigned herein consents to the payment of any consideration for the lands being herein released directly to the (mortgagor/grantor), his heirs, successors or assigns.”

9-10.4 Improvement Straddling Right of Way Line

Used in each case in which improvements straddle the right of way line. All improvements within the acquisition area are automatically acquired with the land as “real property.” Owners (or others) do not “retain” or purchase improvements to be removed or salvaged, but may purchase them as personal property by purchasing salvage rights. Salvage rights (sales of personalty) are transacted and documented in a separate Fixtures and Improvements Agreement (DOT Form 263-005).

“It is understood and agreed that the improvement(s) located partially upon the lands herein conveyed and partially upon the grantor’s remaining lands

is (are) conveyed herein in its (their) entirety to the state of Washington, its agents or assigns.” Continue with text in Section 9-10.7.

9-10.5 Timber (Crop) Removal

Use if timber (crops) are to be removed by the grantor:

“The grantor herein reserves the right to remove (all hay, the sugar beet crop, all standing or down timber) located (insert Right of Way centerline or other legal description of the area where timber/crop removal is permitted) at any time until (insert exact date); however, all (timber, crops) yet remaining on said lands after said date shall become the property of the state of Washington and all rights of the grantor to said (timber, crops) shall then cease and terminate.”

9-10.6 Road Approaches — Nonlimited Access

Access to nonlimited access state highways is managed under the provisions of RCW 47.50.

All new or altered road approaches must be documented by permit. Region Real Estate Services staff will assist in obtaining signatures on permits as requested. We will attempt to obtain signatures on all permits on any project even though there may not be an acquisition from that particular property owner. If any owner refuses to sign, the agent should so note on the permit, leave a copy with the owner, and return the original to the region. A copy of all Road Approach Permits must be included in your acquisition files.

A record of authorized road approaches will be maintained in the State Access and Hearings Engineers Office in Olympia. The information in this computer file will be input and updated in each region office responsible for issuing the permits.

Acquisition documents will not make reference to any road approach or access rights. All information about the approach type, location, maintenance, right of entry, etc., will be in the permit. Region Real Estate Services will coordinate closely with those issuing the permits to assure the appropriate language is included in each one.

If the owner requests any additional approaches, the agent should explain the procedure established in the statute and provide whatever help is appropriate for the owner to apply. If at all possible, any request for additional or modified access should be separated from our acquisition activities.

If the owner insists on a document assuring them the state will reconstruct any existing approach, we can provide a letter but the letter should not contain any reference to a type or location.

The construction memorandum regarding road approaches may still be prepared and provide to the Project Engineer. That decision will probably vary region to region. The memorandum does not have to be sent with your acquisition file. Remember that the Project Engineer’s signature on this memo DOES NOT -

CONSTITUTE APPROVAL OF THE APPROACH but only agreement that it will be constructed as part of the project. This memorandum is intended for internal use and should not be given to the property owner.

9-10.7 Construction Item

If the instrument contains a clause requiring or potentially obligating the state to perform any nature of construction or labor on or adjacent to the grantor's remaining land, the following is inserted as part of said clause in the grantor's instrument only:

“The grantor herein further grants to the state of Washington, or its agents, the right to enter upon the grantor's remaining lands where necessary to (construct said approach, remove said improvement, remove said crop, remove said timber, etc.).”

9-10.8 Occupancy Clauses

9-10.8.1 General

In the absence of agreement otherwise, occupancy of unimproved real property will occur upon payment being made available to the grantor(s). No clause is required.

9-10.8.2 Early Occupancy

If early occupancy is required, one of the following clauses will be used.

- A. “The undersigned hereby agree(s) to surrender occupancy of the lands and/or rights herein conveyed, on the date of acceptance of this instrument by the state.”

In rare instances it may be necessary to gain immediate occupancy. In those cases, the following may be used:

- B. “The undersigned hereby agree(s) to surrender immediate occupancy of the lands and/or rights herein conveyed.”

9-10.9 Reserved

9-10.10 Release of Damages

The following are examples of clauses which are to be inserted between the words:

“. . . by reason of” and the words: “due to the . . . “ on the Release of Damages (Form RES315) to identify the specific damages for which the state of Washington is making a settlement.

Note: Since these clauses are inserted in the middle of a sentence, the clauses do not require capitalization or final punctuation.

9-10.10.1 Fencing

The following clause releases the state from the obligation to erect and maintain fencing:

“ . . . its obligation to erect and maintain fencing along the right of way line contiguous to the hereinafter described property . . . “

9-10.10.2 Water Systems

The following clauses release the state from its obligations under a Well Agreement (Form RES 313):

“ . . . the loss of an existing water system and the construction of a replacement water system . . . “

Also insert the following clause before the Delivery Clause (see Section 9-12):

“The owners of record of the herein above described lands, for themselves, their heirs, successors and assigns, hereby release the state of Washington from all responsibility and obligation imposed or implied by that certain Well Agreement _____, between the parties hereto, and hereby declare and acknowledge said Agreement to have been fulfilled and terminated.”

9-10.11 Mineral Rights Reservation

Used in some instruments of conveyance to the state (deeds), and in some - instruments releasing mineral rights.

“It is understood and agreed that all mineral, coal, oil, ores and gases below the surface of the lands conveyed by this instrument and hereinbefore described, are hereby reserved unto the grantors, their successors and assigns; EXCEPT, however, that in the exploration, development, excavation, mining or removing of same, the surface of said lands shall not be occupied or used, the exercise of said rights shall not injure or damage in any manner the highway or highways to be built thereon, increase the cost of maintenance thereof, or interfere with the primary use of said lands and rights of way by the state of Washington, its successors or assigns for road, street, highway or other purposes, or franchises granted across, along, or beneath the surface of said highways, nor shall the grantors, their successors or assigns, do any exploration, development, excavation or mining beneath the surface of the lands hereinabove conveyed within a vertical depth of 500 feet below said surface until the said grantors, their successors or assigns have a plan for such exploration, development, excavation or mining approved by the Secretary of Transportation of the state of Washington, or his successors and assigns, determining that such plan will not be injurious to the primary use of the surface.”

9-10.12 Slope Easement, Termination Of

Used to indicate the method of termination of a slope easement. This clause may be used only if the slope easement does not include reservation of sidewalk areas, utility rights of way, etc.

“It is understood and agreed that, in the event the grantor, his heirs, or assigns, shall excavate and/or place an embankment upon the area covered by this slope easement to the level of the grade of the above-mentioned highway abutting thereon, all rights of the grantee herein shall cease and terminate.”

9-10.13 Easement for Transfer

Used only when the easement is to be transferred to another party; e.g., a slope easement for a frontage service road which is to be relinquished to the county. “It being understood and agreed that, upon completion of construction, the easement rights granted herein are to be transferred to _____ by an appropriate instrument to be placed of record and that thereafter the rights of the state shall cease and terminate.”

9-10.14 Reversion

Used only upon demand by major land owners maintaining substantial real property holdings that traditionally have conveyed only easements, provided that the acquisition compensation reflects the reversion right, and only with prior approval of DRES.

9-10.14.1 Reversion Clause

Upon abandonment of the lands conveyed herein, all of the state’s right, title and interest in and to said lands shall revert to the grantors, their heirs, successors, or assigns; subject to any permits or franchises for public or private utilities.

9-10.15 Right of First Refusal

Used only upon demand by grantor(s) with prior approval of the DRES.

9-10.15.1 First Refusal Clause

Upon determination by WSDOT that all or any portion of the lands herein - conveyed are surplus to the needs of the state the grantor(s), __ (his, her, their) __ heirs, successors, or assigns shall be offered the first right to acquire said land at its then appraised value.

9-10.16 Donation Clause

(My/Our) donation of (parcel number or property description) to the State of Washington is made voluntary and with full knowledge of (my/our) entitlement to receive just compensation therefore. (I/We) hereby waive the State of Washington from obtaining an appraisal of the acquired property.